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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,970	09/18/2000	Rainier Betelia	249/056	4613

34313 7590 11/10/2003  
ORRICK, HERRINGTON & SUTCLIFFE, LLP  
4 PARK PLAZA  
SUITE 1600  
IRVINE, CA 92614-2558

EXAMINER

HO, UYEN T

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 11/10/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/664,970	Applicant(s) BETELIA ET AL.	
	Examiner (Jackie) Tan-Uyen T. Ho	Art Unit 3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,9-20 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9-20,37 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

### DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. New grounds of rejection are made below.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox '758 in view of Martinez et al. '909. Cox discloses all the limitations of the claims including a bumper (26). However, Cox fails to disclose weakened regions between slits/leaflets. Martinez et al. disclose a implant delivery system including an elongate tubular outer sheath having a distal end configured to prevent trauma when inserted into a vessel, the distal end including a plurality of flexible leaflets being deflectable from a closed position to an open configuration and the leaflets are connected to one another by weakened regions and the weakened regions being tearable for deploying an implant (col. 4, lines 6-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ weakened regions between the plurality of flexible slits/leaflets of Cox's sheath in order to prevent the leaflets from

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flaring out and damaging the wall of a blood vessel during advancing Cox's delivery system into a vessel.

4. Claims 1, 9-20, 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenker et al. (6,024,763) in view of Martinez et al. (5,453,090). Lenker et al. disclose an implant delivery system including an elongate tubular member (32), a bumper element comprising helical coil (35), and a stent graft, and the elongate tubular member having a distal end including a plurality of leaflets and the leaflets (fig. 11). However Lenker et al. fails to disclose the leaflets connected to each other by weakened regions. Martinez et al. disclose a implant delivery system including an elongate tubular outer sheath having a distal end configured to prevent trauma when inserted into a vessel, the distal end including a plurality of flexible leaflets being deflectable from a closed position to an open configuration and the leaflets are connected to one another by weakened regions and the weakened regions being tearable for deploying an implant (col. 4, lines 6-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ weakened regions between the leaflets of Lenker et al.'s implant delivery system in order to prevent damaging the wall of a blood vessel by preventing the leaflets from flaring out during advancing the delivery system into a blood vessel.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is (703) 306-3421. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



(Jackie) Tan-Uyen T. Ho  
Patent Examiner  
Art Unit 3731  
November 4, 2003